

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

PAUL ALEXANDER MCPETERS,

§

Plaintiff,

§

§

§

VS.

§

§

Civil Action No. 4:07-cv-03814

HONORABLE K. MICHAEL EDWARDS,

§

Individually and in an Official Capacity;

§

MONTGOMERY COUNTY, TEXAS;

§

and JOHN DOES, Individually and

§

in an Official Capacity,

§

§

Defendants.

§

**DEFENDANT THE HONORABLE FREDERICK E. EDWARDS'S
REPLY TO PLAINTIFF KAREN MCPETERS'S RESPONSE TO
JUDGE EDWARDS'S MOTION TO DISMISS**

Introduction

1. Defendant Honorable Frederick E. Edwards (“Judge Edwards”) asks the Court to grant his July 14, 2010 motion to dismiss the Second Amended Complaint (the “Complaint”) filed by plaintiff Karen McPeters (“McPeters”). *See motion to dismiss, Docket No. 56.*¹ For all of the reasons asserted in Judge Edwards’s motion to dismiss, McPeters has wholly failed to state a claim against Judge Edwards upon which relief can be granted; she has failed to state her fraud-based claims with particularity; and this Court lacks jurisdiction over certain of McPeters’s

¹ On August 13, 2010, along with her responses to the various motions to dismiss, McPeters filed a third amended complaint and a motion for leave to file the amended complaint. *See Docket Nos. 70, 71.* Judge Edwards is opposed to the motion for leave, and will file a response to McPeters’s motion on or before the due date for filing such a response.

claims. Dismissal of this case against Judge Edwards is therefore appropriate and warranted under the Federal Rules. *See* FED. R. CIV. P. 9(b), 12(b)(1), (6).

McPeters's Suit Is Barred By The Doctrine Of Judicial Immunity.

2. Judge Edwards is entitled to judicial immunity for the entirety of his alleged actions about which McPeters complains, and McPeters's rambling, often incoherent response does not demonstrate otherwise. *See Docket No. 72*. Again, Judge Edwards is entitled to judicial immunity for his alleged actions because:

- the entirety of Judge Edwards's acts and/or omissions made the basis of the Complaint—including issuing the 2003 order about which McPeters complains—are all normal judicial functions, *see* ;
- the entirety of Judge Edwards's acts and/or omissions made the basis of the Complaint occurred in a courtroom or appropriate adjunct spaces such as the judge's chambers, and McPeters does not allege otherwise;
- the entirety of Judge Edwards's acts and/or omissions made the basis of the Complaint center around a case then pending before Judge Edwards, *i.e.*, *McPeters I* and *McPeters II*, in the 9th District Court of Montgomery County, Texas; and
- the entirety of Judge Edwards's acts and/or omissions made the basis of the Complaint arose directly out of a visit to and/or McPeters's dealings with Judge Edwards in his official capacity **only**.

See Ballard v. Wall, 413 F.3d 510, 515 (5th Cir. 2005) (describing the factors a court should consider when determining whether judicial immunity applies). More specifically, mandating electronic filing is a “normal judicial function,” and not merely an administrative one, as McPeters contends, because it must be done by a judge; were that not the case, one would assume that all courts in Montgomery County would require e-filing. Yet they do not. *See, e.g.*,

Second Amended Complaint, ¶ 58 (making unfounded accusations against the only other district court in Montgomery that requires e-filing through LNFAS).

3. Tellingly, McPeters fails to cite any persuasive authority in support of her contention that judicial immunity does not bar her claims. *See Response*, pp. 7–10. That is because neither of the cases cited by McPeters in which the doctrine of judicial immunity was found not to apply bears any similarity to this case; *i.e.*, neither case involves the complaints of a litigant in the judge’s court. *See, e.g., Forrester v. White*, 484 U.S. 219, 227–29 (1988) (declining to apply judicial immunity when judge was functioning in the capacity of an employer); *Turney v. O’Toole*, 898 F.2d 1470, 1474 (10th Cir. 1990) (declining to apply *quasi*-judicial immunity for state actors for certain complained-of actions when such actions fell outside the scope of a judge’s order.). Again—even if Judge Edwards’s actions were wrong, or malicious, or in excess of his authority, and they were not, he would *still* be entitled to immunity for those actions. *See, e.g., Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978). Judge Edwards is entitled to dismissal of the entirety of McPeters’s claims against him because all of McPeters’s claims are barred by the judicial immunity doctrine. *See id.*; *see also* FED. R. CIV. P. 12(b)(6).

McPeters Is Not Entitled To Injunctive Relief.

4. McPeters has not shown herself, either in her Complaint or in her response to Judge Edwards’s motion, entitled to injunctive relief under 42 U.S.C. § 1983. *See, generally, Complaint, Docket No. 19; response to motion to dismiss, Docket No. 72.* As described in *Section E* of Judge Edwards’s motion to dismiss, McPeters is not entitled to injunctive relief. *See § E, Docket No. 56.* And, even though judicial immunity does not necessarily bar claims for properly-asserted injunctive or declaratory relief, dismissal of McPeters’s claims is appropriate because “the federal courts have no authority to direct state courts or their judicial officers in the

performance of their duties.” *Johnson v. Bigelow*, 239 Fed. Appx. 865 (5th Cir. 2007), citing *Moye v. Clerk, DeKalb County Superior Court*, 474 F.2d 1275, 1276 (5th Cir. 1973).

5. McPeters’s contention that any motion seeking relief from the 2003 order would be denied is baseless as it is nothing but pure speculation. Further, McPeters, by failing to seek such relief and by continuing to paper file documents in blatant violation of the 2003 Order, has failed to avail herself of an “obvious, adequate legal remedy,” and therefore has shown herself not entitled to injunctive relief. *See, e.g., Bryant v. Watts*, 3 F.3d 437, 1993 WL 347037 (5th Cir. Aug. 13, 1993). Judge Edwards respectfully requests this Court to dismiss this case. *See* FED. R. CIV. P. 12(b)(1), (6).

McPeters Response Otherwise Fails To Survive Judge Edwards’s Motion.

6. For all of the other reasons set forth in Judge Edwards’s motion to dismiss, McPeters has failed to state any claim against Judge Edwards upon which relief can be granted, including failing to properly allege a RICO cause of action. *See* §§ A, C, D, F–I, *Docket No. 56*.. Further, to the extent necessary, Judge Edwards hereby joins in, adopts, and incorporates by reference as if fully set forth herein the reply brief filed by defendants Montgomery County, Texas and Barbarar Gladden Adamick. *See Docket No. 75*. Judge Edwards respectfully requests this Court to dismiss McPeters’s baseless, harassing case against him. *See* FED. R. CIV. P. 12(b)(1), (6).

Conclusion

7. Judge Edwards requests the Court to grant his motion and to dismiss McPeters's Second Amended Complaint against him under Rules 12(b)(6), 12(b)(1), and/or 9(b) of the Federal Rules of Civil Procedure. Judge Edwards also requests any other, further, or alternative relief to which he is legally or equitably entitled.

Respectfully submitted,

SHEPHERD, SCOTT, CLAWATER & HOUSTON, L.L.P.

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Certificate Of Service

I hereby certify that on Monday, August 23, 2010, a true and correct copy of the foregoing instrument was forwarded via electronic delivery pursuant to local rules, *to-wit*:

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